

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA**

WHOLE WOMAN’S HEALTH ALLIANCE, *et al.*,

Plaintiffs,

v.

UNITED STATES FOOD AND DRUG
ADMINISTRATION, *et al.*,

Defendants.

Case No. 3:23-cv-00019-RSB

**PLAINTIFFS’ RESPONSE TO DEFENDANTS’
NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiffs respectfully submit that Defendants’ Notice of Supplemental Authority attaching *Washington v. FDA*, No. 1:23-cv-3026-TOR (E.D. Wash. July 8, 2025) should not affect the Court’s consideration of the pending cross-motions for summary judgment in this case. The *Washington* opinion does not assess FDA’s adherence to critical statutory requirements (21 U.S.C. §§ 355-1(a)(1), (f)(1) and (f)(2)) and defers to FDA’s decision to maintain the 2023 mifepristone REMS without first determining whether FDA had engaged in the “reasoned decisionmaking” needed to justify such judicial deference under the arbitrary-and-capricious standard of review. *See Roe v. Dep’t of Def.*, 947 F.3d 207, 220 (4th Cir. 2020) (courts retain important role in “ensuring that agencies have engaged in reasoned decisionmaking”) (quoting *Judulang v. Holder*, 565 U.S. 42, 53 (2011)); *Sierra Club v. U.S. Dep’t of Interior*, 899 F.3d 260, 293 (4th Cir. 2018) (same).

DATED: July 17, 2025

Respectfully submitted,

/s/ Gail M. Deady

Gail M. Deady

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Linda C. Goldstein (*pro hac vice*)

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July 2025, I filed the foregoing document with the Clerk of Court using the CM/ECF system.

/s/ Gail M. Deady

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